

**TENNESSEE DEPARTMENT OF REVENUE  
REVENUE RULING #95-15**

**WARNING**

**Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.**

**SUBJECT**

Whether a foreign corporation's general partnership interest, or limited partnership interest, in a partnership doing business in Tennessee will create sufficient nexus to subject the corporation to Tennessee corporate franchise, excise taxes when the corporation has no other activities in Tennessee, and how a foreign corporate partner having nexus in Tennessee computes its apportionment formula.

**SCOPE**

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

**FACTS**

Parent Company (PC) is a holding company incorporated and commercially domiciled in California. PC owns stock in a number of subsidiaries including two wholly owned subsidiaries (S1 and S2). S1 is incorporated and commercially domiciled in California and has no business operations in Tennessee. S2 is incorporated in Delaware and has no business operations in Tennessee or elsewhere. Neither PC, S1, nor S2 have ever obtained a certificate of authority from the Tennessee Secretary of State to transact business or conduct affairs in Tennessee.

S1 is engaged in the nationwide distribution of computer hardware and software. S1 is considering forming a limited partnership in which it will be a general partner and S2 will be a limited partner. The partnership will be formed under the laws of Tennessee and will operate solely in Tennessee. It will operate a distribution facility which will warehouse products, process purchase requests, operate a returns center, and perform sundry services, such as freight consolidation, for S1.

**QUESTIONS**

- (1) Will S1's ownership interest as a general partner in the limited partnership create sufficient nexus in Tennessee to subject S1 to Tennessee corporate franchise, excise taxes?
- (2) Will S2's ownership interest as a limited partner in the limited partnership create sufficient nexus in Tennessee to subject S2 to Tennessee corporate franchise, excise taxes?
- (3) How does a corporation, with sufficient nexus in Tennessee to be subject to Tennessee corporate franchise, excise taxes, determine its apportionment formula when it is also doing business outside Tennessee and is a partner in a partnership.

**RULINGS**

- (1) Yes.
- (2) No.

(3) The corporate partner's ownership share of the partnership's property, payroll and sales are included in the corporation's apportionment formula in accordance with T.C.A. §§ 67-4-811 and 67-4-910.

### ANALYSIS

#### A CORPORATE GENERAL PARTNERSHIP INTEREST IN A PARTNERSHIP DOING BUSINESS IN TENNESSEE CREATES SUFFICIENT NEXUS FOR TENNESSEE TO IMPOSE CORPORATE FRANCHISE, EXCISE TAXES

When a partnership is doing business in Tennessee, an out-of-state corporation having a general partnership interest has sufficient Tennessee nexus to be subject to corporate franchise, excise taxes here. See: *Federated Stores Realty, Inc. v. Huddleston*, 852 S.W.2d 206 (Tenn. 1992). S1 will be required to file a Tennessee corporate franchise, excise tax return for all tax years in which it has a general partnership interest in the Tennessee partnership. Income from S1's general partnership interest in the Tennessee partnership would be included in S1's federal taxable income and thus in the Tennessee excise tax base under T.C.A. § 67-4-805(a)(1). The corporate partner's franchise tax minimum measure will include its ownership share of specific partnership property in accordance with T.C.A. § 67-4-906(a)(1), (3) and (7)(a).

#### A LIMITED PARTNERSHIP INTEREST, IN AND OF ITSELF, CREATES NO TENNESSEE NEXUS

For many years the Tennessee Department of Revenue has taken the position that a foreign corporate limited partner is not doing business in Tennessee so as to be subject to Tennessee corporate franchise, excise taxes if its activities are limited as follows:

- (1) The corporate limited partner's only business activity in Tennessee is the holding of a limited partnership interest in a partnership(s) with nexus in Tennessee; and
- (2) The corporate limited partner exercises no power, management or control over the partnership(s) except such powers or capacities outlined in T.C.A. § 61-2-302 which limited partners may exercise without participating in the management or control of a partnership.

A foreign corporate limited partner's involvement in a partnership doing business in Tennessee appears to be similar to the interest of a foreign corporation whose only Tennessee activity is that of a stockholder in a corporation doing business in Tennessee. Neither the limited partner nor the stockholder have the right to participate in the management or control of the partnership, or corporation, as the case may be, and thus neither are said to be "doing business" in Tennessee so as to be subject to corporate franchise, excise taxes imposed by T.C.A. §§ 67-4-901 et seq. and 67-4-801 et seq. The Department's position with regard to this matter considers a foreign corporate limited partner in a partnership having nexus in Tennessee as having only a passive investment in Tennessee just as does a foreign corporate stockholder in a corporation having nexus in Tennessee. Such a passive investment would not create sufficient tax nexus for Tennessee to impose corporate franchise, excise taxes.

It would be possible for a foreign corporate limited partner in a partnership having nexus in Tennessee to engage in other transactions in Tennessee, either with the limited partnership itself, or with other parties, which would result in sufficient Tennessee minimum contacts to subject it to corporate franchise, excise taxes. For example, such a foreign corporate limited partner which also has a general partnership interest in a partnership with Tennessee nexus, or which also has Tennessee activities which are not protected by Title 15 U.S.C.A. §§ 381-384, would be subject to Tennessee franchise, excise taxes.

Under the facts presented, S2's only activity in Tennessee appears to be a limited partnership interest in a Tennessee partnership. Accordingly, S2 is not subject to Tennessee corporate franchise, excise taxes and is not required to file franchise, excise tax returns with this Department.

APPORTIONMENT FORMULA COMPUTATIONS  
FOR A CORPORATE PARTNER WITH NEXUS  
IN TENNESSEE

When a foreign corporate partner, whether general or limited, has nexus in Tennessee and is also doing business outside Tennessee, the corporation must compute an apportionment formula for corporate franchise, excise tax purposes under T.C.A. §§ 67-4-910 and 67-4-811. These statutes state that corporate net worth and net earnings shall be apportioned to Tennessee by an average ratio of corporate property, payroll and sales in Tennessee as to property, payroll and sales everywhere.

For purposes of computing such an apportionment formula, T.C.A. §§ 67-4-910(b)(2), (e)(3) and (g)(2) and 67-4-811(b)(2), (e)(2) and (g)(2) provide that, in franchise, excise tax apportionment statutes, the terms "property", "payroll" and "sales" include a corporate partner's share of the partnership's property, payroll and sales. Thus, when a corporate partner computes an apportionment formula on its franchise, excise tax return to apportion net worth and net earnings to Tennessee, it must include in the formula its ownership share of the partnership's property, payroll and sales.

Under the facts presented, PC and S2 have no nexus in Tennessee and are not required to file Tennessee franchise, excise tax returns. S1 does have nexus in Tennessee as a result of its general partnership interest and, when filing its franchise, excise tax return, it must include its ownership share of partnership property, payroll and sales in its apportionment formula to determine the proper ratio to apportion net worth and net earnings to Tennessee.

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